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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 NETSTREAMS, L.L.C.,

11 Plaintiff,

12 v.

13 JEFFREY G. GARRETT and SMART
14 ELECTRONICS, a sole proprietorship,

15 Defendant.

CASE NO.:

**COMPLAINT FOR FEDERAL
TRADEMARK INFRINGEMENT,
FALSE ADVERTISING,
INTERFERENCE WITH
CONTRACTUAL RELATIONS, AND
VIOLATION OF THE
WASHINGTON CONSUMER
PROTECTION ACT**

16 DEMAND FOR JURY TRIAL
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1 Plaintiff NetStreams L.L.C. (“Plaintiff” or “NetStreams”) hereby complains against
2 defendant Jeffrey G. Garrett the sole proprietor of defendant Smart Electronics (collectively
3 “Defendant”), on personal knowledge as to its own actions and on information and belief as to
4 the actions of others, as follows:

5 **PARTIES**

6 1. Plaintiff is a limited liability company organized and existing under the laws of
7 the State of Texas, with its principle place of business in Austin, Texas.

8 2. Plaintiff is informed and believes, and on that basis alleges, that Jeffrey G. Garrett
9 is, and at all times relevant was, an individual in the state of Washington.

10 3. Plaintiff is informed and believes, and on that basis alleges, that Smart Electronics
11 is a sole proprietorship operated pursuant to a Washington state business license, under the laws
12 of Washington state by Jeffrey G. Garrett, with Smart Electronics’s official business
13 headquarters at 3046 128th Avenue South East, Unit #30, Bellevue, Washington 98008.

14 **JURISDICTION AND VENUE**

15 4. This court has original jurisdiction over the subject matter of this action pursuant
16 to 28 U.S.C. §§ 1331 and 1338. This court has supplemental jurisdiction pursuant to 28 USC
17 §1367 for related state law claims.

18 5. This court has personal jurisdiction over the Defendant because of its location
19 within the state of Washington, and its residence and business activities within Washington
20 State.

21 6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because
22 Defendant’s business is primarily located within this district and Defendant’s business conduct
23 giving rise to this action originates within this district.

24 **GENERAL ALLEGATIONS**

25 **Plaintiff’s Product and Brand**

26 7. Plaintiff distributes high quality multi-room audio, video, and control products
27 under the trademark NETSTREAMS.

1 8. Plaintiff's NETSTREAMS mark is used in conjunction with a suite of audio and
2 video products including: Control systems, signal tuners, amplifiers and control interfaces which
3 are combined and installed by certified custom installers to create customized and fully
4 integrated systems for use in home or business settings. The audio and video products bearing
5 the NETSREAMS mark are designed to be fully integrated and hardwired into the home or
6 office. NetStreams's systems provide multiple control access points from different rooms with
7 different audio and video capabilities providing a high quality and customized experience to fit
8 each individual customer's needs.

9 9. A material part of Plaintiff's products bearing the NETSTREAMS mark is the
10 certified custom installers whom provide installation, set up, integration and quality control of
11 products bearing the NETSTREAMS mark. Certified custom installation helps to ensure that
12 customers receive the high quality custom systems that the NETSTREAMS mark has come to
13 represent.

14 10. Plaintiff provides a factory warranty for its products bearing the NETSTREAMS
15 mark, but that warranty is expressly limited to apply only to products that are purchased from
16 NetStreams or from an authorized dealer of products bearing the NETSTREAMS mark.

17 11. Plaintiff does, continues to, and has advertised, publicized, and used the
18 NETSTREAMS mark nationally in connection with high quality audio and visual equipment
19 since at least as early as August of 2003, and has sold its products to families and businesses
20 across the United States.

21 12. Plaintiff has advertised its products extensively under the NETSTREAMS mark,
22 and has received acclaim for its products in premiere industry publications.

23 13. Due to Plaintiff's extensive and continuous use of its trademarks in the United
24 States, the NETSTREAMS mark has developed and possesses secondary meaning in the minds
25 of the purchasing public, and is associated with the high quality audio and video products.

26 Plaintiff's Distribution Network and Dealer Agreement

1 14. To maintain control of the quality of the products marketed and sold under the
2 NETSTREAMS mark, Plaintiff distributes its products exclusively through authorized dealers.
3 Plaintiff enters into an agreement with each authorized dealer (“Dealer Agreement”) which,
4 among other things, provides a nonexclusive license to the dealer to use the NETSTREAMS
5 trademark.

6 15. The Plaintiff precludes online sale by authorized dealers without prior written
7 consent from NetStreams, in part to try and ensure quality customer service and that a
8 NetStreams certified custom installer handles the installation. Skilled installation, as provided
9 and ensured by NetStreams’s trained and certified custom installers, is a material part of
10 NetStreams products and provides proper integration, functionality, quality control, and that
11 customers get the best quality of audio and video experience available from NetStreams’s
12 products bearing the NETSTREAMS mark.

13 16. The Plaintiff also prohibits “transshipping” by authorized dealers. Authorized
14 dealers may not sell NetStreams products to a person who then sells the products at retail, or
15 whom the dealer suspects might sell the products at retail without breaching the Dealer
16 Agreement.

17 Defendant’s Business and Unauthorized Use of the NETSTREAMS Mark

18 17. Upon information and belief, Jeffrey G. Garrett is an owner, officer, employee,
19 director, or sole proprietor of Smart Electronics.

20 18. Defendant is not, and has never been, an authorized dealer of Plaintiff’s products.

21 19. Defendant currently markets and offers for sale over fifty different products of
22 Plaintiff’s on its website www.garrett-smarthome.com (“Defendant’s Website”). Plaintiff’s
23 products listed on Defendant’s Website are advertised and offered for sale in connection with the
24 NETSTREAMS trademark.

25 20. By advertising products bearing the NETSTREAMS mark on Defendant’s
26 Website, Defendant caused that advertising and the NETSTREAMS mark to enter interstate
27 commerce, because Defendant’s Website is viewable and allows such viewer to purchase

1 products bearing the NETSTREAMS mark from anywhere in the country.

2 Defendant's False or Misleading Statements and Other Conduct Giving Rise to Liability

3 21. Defendant's commercial advertisement of products bearing the NETSTREAMS
4 mark on Defendant's Website states that "Original manufacturer warranty is intact on all items
5 we sell" and the products are either purchased directly from the manufacturer or from authorized
6 distributors.

7 22. Defendant's commercial advertisement is false because the NetStreams
8 manufacturers warranty is expressly limited to products bearing the NETSTREAMS mark that
9 are purchased from NetStreams or a NetStreams authorized dealer.

10 23. Defendant's commercial advertisement is misleading because it is likely to cause
11 confusion, to cause mistake, or to deceive consumers into believing the Defendant is affiliated,
12 connected, or associated with the Plaintiff, or that the Defendant's sale of products bearing the
13 NETSTREAMS mark is sponsored or approved by the Plaintiff.

14 24. These false and misleading statements are material because they are likely to
15 influence the purchasing decisions of the Defendant's Website's viewers.

16 25. Upon information and belief the Defendant does not provide NetStreams certified
17 custom installers to handle the installation of products bearing the NETSTREAMS mark sold
18 from Defendant's Website.

19 26. Upon information and belief Defendant's actions have induced or caused one or
20 more of the Plaintiff's authorized dealers to break their Dealer Agreement by purchasing
21 products bearing the NETSTREAMS mark for transshipping.

22 27. Upon information and belief the Defendant has obtained and sold products
23 bearing the NETSTREAMS mark for the sole purpose of profiting from said unauthorized sale.

24 Plaintiff's Attempts to Remedy the Situation with Defendant

25 28. On or about May 3, 2006, shortly after it came to Plaintiff's attention that
26 Defendant was marketing and attempting to sell NetStreams products on its website, Plaintiff
27 sent Defendant an email stating that NetStreams products are available for sale only from

1 authorized dealers, and that their dealer agreement precludes anyone from selling the product
2 online.

3 29. On or about May 5, 2006, Jeffrey G. Garrett replied by email, informing Plaintiff
4 that NetStreams products would no longer be sold on Defendant's website.

5 30. On or about April 23, 2007, after Plaintiff became aware that Defendant was
6 again marketing and attempting to sell NetStreams products on its web site, counsel for Plaintiff
7 sent Jeffrey G. Garrett a letter objecting to Defendant's activities. The letter explained that
8 Plaintiff only distributes to authorized dealers, which Defendant is not, thus the products
9 advertised for sale are apparently obtained in violation of a Dealer Agreement. The letter then
10 insisted that Defendant remove all references concerning the availability of NetStreams products
11 from Defendant's website.

12 31. Defendant continues to advertise and offer for sale products bearing the
13 NETSTREAMS mark on Defendant's Website.

14 **FIRST CAUSE OF ACTION: TRADEMARK INFRINGEMENT**

15 **(LANHAM ACT SECTION 32, 15 U.S.C. § 1114)**

16 32. Plaintiff incorporates and realleges Paragraphs 1-31 above, herein.

17 33. Plaintiff has used the NETSTREAMS mark continuously and exclusively in
18 commerce in the United States since at least as early as August of 2003, developing a strong
19 association between Plaintiff's products, company, and the mark.

20 34. Defendant is selling NetStreams products bearing the NETSREAMS mark
21 without the consent or authorization of the Plaintiff.

22 35. The products the Defendant sells bearing the NETSTEAMS mark are materially
23 different from the products sold by the authorized dealers bearing the NETSTREAMS mark.

24 36. Upon information and belief Defendant's sales of materially different products
25 bearing the NETSTREAMS mark has caused and is likely to continue to cause consumer
26 confusion and damage to the goodwill associated with the NETSTREAMS mark.

1 37. Upon information and belief the Defendant's acts causing confusion and damage
2 to the goodwill associated with the NETSTREAMS mark has damaged the Plaintiff.

3 38. The Plaintiff does not possess adequate remedies at law to compensate for the
4 damage done and continuing to be done to the NETSTREAMS mark. Defendant's acts have
5 caused and will continue to cause Plaintiff irreparable harm. Plaintiff is therefore entitled to an
6 injunction as well as damages for an amount to be proven at trial.

7 **SECOND CAUSE OF ACTION: FALSE ADVERTISING**

8 **(LANHAM ACT SECTION 43(a), 15 U.S.C. § 1125(a))**

9 39. Plaintiff incorporates and realleges Paragraphs 1-38 above, herein.

10 40. Defendant's national commercial advertisement of products bearing the
11 NETSTREAMS mark contains material false statements of fact which misrepresent the nature,
12 characteristics or qualities of those products sold by the Defendant bearing the NETSTEAMS
13 mark and are likely to deceive purchasers of NetStreams products.

14 41. Defendant's national commercial advertisement of products bearing the
15 NETSTREAMS mark contain material statements of fact and claims which are likely to cause
16 confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of
17 the Defendant with the Plaintiff, or as to the origin, sponsorship, or approval of the products
18 Defendant sells bearing the NETSTREAMS mark by the Plaintiff.

19 42. Defendant's false and misleading advertising has damaged Plaintiff in an amount
20 to be proven at trial consisting of, among other things, lost profits, injury to business
21 relationships, and damage to the goodwill associated with the NETSTREAMS mark.

22 **THIRD CAUSE OF ACTION: INTERFERENCE WITH CONTRACT RELATIONS**

23 **(WASHINGTON COMMON LAW)**

24 43. Plaintiff incorporates and realleges Paragraphs 1-42 above, herein.

25 44. Defendant had and continues to have knowledge of a valid and enforceable
26 contract between authorized dealers of products bearing the NETSTREAMS mark and the
27 Plaintiff, because Plaintiff informed Defendant of the Dealer Agreement.

1 45. Upon information and belief, Defendant intentionally induced or caused an
2 authorized dealer of products bearing the NETSTREAMS mark to breach their Dealer
3 Agreement with NetStreams by purchasing said products for transshipping.

4 46. Upon information and belief, Defendant's acts have caused and will continue to
5 cause damages to the Plaintiff from the breach of the Dealer Agreement.

6 47. Upon information and belief Defendant's have a duty of noninterference with the
7 Dealer Agreement between the Plaintiff and the Plaintiff's authorized dealers because the
8 Defendant is not a party to the contract and induced or caused the breach of the Dealer
9 Agreement solely for the Defendant's financial gain by unauthorized commercial resale of
10 products bearing the NETSTREAMS mark.

11 **FOURTH CAUSE OF ACTION:**

12 **VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT**

13 **(WASH. REV. CODE §§ 19.86.010 et seq.)**

14 48. Plaintiff incorporates and realleges Paragraphs 1-47 above, herein.

15 49. Defendant is committing and has committed unfair and deceptive acts and/or
16 conduct in its trade or business which have the tendency to deceive the public.

17 50. Defendant's unfair and deceptive acts and/or conduct affects the public interest,
18 because among other reasons said conduct: (1) is and was committed in the course of
19 Defendant's trade or business, (2) represents a continuing pattern of behavior with regard to
20 products bearing the NETSTREAMS mark, (3) occurred prior to the Plaintiff's institution of this
21 suit, (4) has the potential to continue unless stopped by this suit, and (5) will potentially affect all
22 consumers who purchase products bearing the NETSTREAMS mark from the Defendant.

23 51. Defendant's unfair and deceptive conduct has damaged the Plaintiff in its trade or
24 business.

25 52. Plaintiff is entitled to treble damages up to the maximum amount consistent with
26 the Washington Consumer Protection Act, injunctive relief, and to the recovery of its attorney
27 fees and costs in bringing this lawsuit.

1 **Prayer for Relief**

2 WHEREFORE, Plaintiff prays:

3 1. That this court grant a preliminary and permanent injunction enjoining Defendant,
4 its subsidiaries, parent and affiliated companies, successors, assigns, officers, directors, agents,
5 partners, servants, and employees, and all others acting in concert with them, from using and
6 infringing Plaintiff's NetStreams mark, and from doing any acts or making any representations
7 that are likely to cause public confusion, mistake, or deception with respect to any relationship
8 between Plaintiff and Defendant or their respective goods, services, or commercial activities;

9 2. For an order requiring Defendant to pay Plaintiff such damages as Plaintiff has
10 sustained as a result of Defendant's trademark infringement, false advertising, interference with
11 business relations, and violation of the Washington Consumer Protection Act;

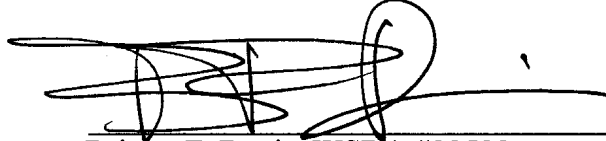
12 3. For an order requiring Defendant to pay Plaintiff its attorney's fees incurred in
13 this action and all other costs of the action; and

14 4. For an order granting such other relief as the Court deems just and equitable.
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1 **JURY DEMANDED**

2 Pursuant to Federal Rule of Civil Procedure 38, Plaintiff respectfully demands a trial by
3 jury of all issues in this action so triable.
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5 Dated: May 5, 2008



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